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NO. 278

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IN THE

# Supreme Court of the United States

OCTOBER TERM, 1968

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WALSTON A. LYNN, ET AL,
Petitioners,

*versus*

J. W. CARAWAY, ET AL,
Respondents.

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**ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT**

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## BRIEF OF RESPONDENT CARL W. JONES IN OPPOSITION

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CARL W. JONES

Mid-South Press, Inc., Shreveport, Louisiana

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Respondent Carl W. Jones prays that a Writ of Certiorari not be granted for the reasons hereinafter expressed.

The four questions presented in the petition for certiorari do not pose important questions of federal law which have not already been settled by this Court. They are questions depending largely on facts already settled by two courts.

The lower Courts held the defendant Allison solely liable as the owner and issuer of unregistered securities under the Act, and rendered judgment against him.

As to Jones the Courts said: (Page references to the Petition for Certiorari)

> "Because he has not created or issued a "security" within the meaning of the Act, Jones cannot be said to have violated section 5; therefore the section 12 (1) remedy is not available against him." (*District Court Page* 22).
>
> "Contrary to plaintiffs' assertions here, we find Jones not to have been the principal of Allison." (*District Court Page 24*).
>
> "Similarly, we do not find Jones to have been "in control of" Allison within the meaning of section 15 of the Act so as to subject him to joint and several liability with Allison." (*District Court Page 25*).
>
> "Although the same theories of recovery were stated against all defendants, it was not seriously contended or shown to the Court, that Jones was guilty of any misrepresentations." (*District Court Page 26*).
>
> "The facts have been fully stated by the district court in a light most favorable to the appellants. *Lynn v. Caraway*, 252 F. Supp. 858 (W.D. La. 1966). After a thorough examination of the record, we are of the opinion that the district court's findings of fact are not clearly erroneous, and that the conclusions of law are supported by the cases considered persuasive by this court. The judgment

of the district court is, therefore, affirmed." (*Circuit Court Page 28*).

In the light of these pronouncements of non-liability of Jones, by two Courts, the petitioner would have this Court delve again into the facts to hold Jones liable.

The petitioner animadverts (*Page 11*) that:

> "If the decrees of the lower court are to stand, then any unscrupulous oil promoter can escape the liability created by the Act by simply employing a judgment-proof individual to pose as the real owner of the securities sold through some verbal agreement to that effect."

This is a purely hypothetical statement, not supported by the facts in this case, as found by the Courts below, which specifically held that Jones was not the depicted character of petitioner's hypothesis.

## CONCLUSION

The petition for a Writ of Certiorari should be denied.

Respectfully submitted

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Counsel for Respondent
Carl W. Jones

**CERTIFICATE OF SERVICE**

I hereby certify that copies of the above and foregoing response to the petition for writ of certiorari has been served upon counsel for the petitioner by mailing copies thereof, postage prepaid and properly addressed, as follows:

W. SCOTT WILKINSON
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and also upon

Cook, Clark, Egan, Yancey & King
600 Commercial National Bank Building
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this _____ day of October, 1968.

MARION K. SMITH
Counsel for Respondent
Carl W. Jones